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Via: http://www10.tceq.state.tx.us/epic/efilings Docket Clerk TCEQ Office of the Chief Clerk, MC 105 P.O. Box 13087 Austin, TC 78711-3087 Via: https://cis.soah.state.tx.us/soahupload/ Docket Clerk (monica Luna) State Office of Administrative Hearings 300 W. 15th Street, Suite 504 Austin, Texas 78701-1649

RE: SOAH Docket No. 582-14-2123 TCEQ Docket No. 2014-0124-WR

Dear Docket Clerks:

Please accept for filing in the above referenced dockets the attached Colorado Water Issues Committee's Responses to Exceptions to the Administrative Law Judges' Proposal for Decision and Proposed Order.

Thank you for your attention to this matter and please feel free to contact our office with any questions or concerns.

Very yours truly,

BOOTH, AHRENS & WERKENTHIN,

Carolyn Ahrens

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ATTORNEYS FOR COLORADO WATER ISSUES COMMITTEE

SOAH DOCKET NO. 582-14-2123 TCEQ DOCKET NO. 2014-0124-WR

APPLICATION OF THE LOWER

COLORADO RIVER AUTHORITY FOR EMERGENCY AUTHORIZATION

SET OF ADMINISTRATIVE HEARINGS

COLORADO WATER ISSUES COMMITTEE'S REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

NOW COMES the Colorado Water Issues Committee ("CWIC") of the Texas Rice Producers Legislative Group and submits this its Reply to Exceptions to Proposal for Decision ("PFD") and respectfully shows the following:

Exceptions of the Lower Colorado River Authority

The Lower Colorado River Authority ("LCRA") stated exceptions to Conclusion of Law No. 7 and Ordering Provision No. 7, both concerning allocation of transcription costs. The Administrative Law Judges ("ALJs") determined that "LCRA shall pay the full cost of transcribing the hearing in this case." In its exceptions, LCRA provided an estimate of the total hearing transcription costs² and its recommended apportionment of those costs amongst the parties.³ Both LCRA's estimation of the costs and its proposed allocation of those costs are flawed.

LCRA estimated the total transcription costs to be \$11,015.30, but this includes "[t]he cost for transcription of LCRA's item on the Commissioners' Agenda on February 12, 2014 with normal delivery of the transcript," which LCRA states was \$1900.30. The transcription of the TCEQ agenda meeting should be excluded from consideration of ascribing costs to parties other than the applicant. This TCEQ meeting is a normal part of any application process and was irrelevant to the request for a hearing on the merits of the application. The meeting would have occurred regardless of any comments or requests for hearing that came from it subsequently.

Moreover, the ALJs were correct in determining that LCRA should pay all transcription costs. LCRA and its firm costumers are in a position of financial gain as a result of the

¹ PFD (Conclusion of Law No. 7).

² See LCRA's Exceptions to PFD and Order & Motion for Allocation of Expenses ("LCRA's Exceptions") at 17-18.

³ See LCRA's Exceptions at 18.

⁴ LCRA's Exceptions at 17.

emergency order it sought. Oppositely, CWIC members will be facing a serious financial hardship. The Commission is charged with considering the allocation of transcript costs based on "the financial ability of the party to pay the costs," as well as "any other factor which is relevant to a just and reasonable assessment of costs." It's CWIC's position that these provisions expressly grant our organization relief from the burden of these fees while still allowing it to pursue a defense of its interests. Especially considering the nature of the emergency relief, the allocation of expedited services to the parties whose water supply is being cut-off has an inappropriate dampening effect on the ability of those parties to adequately protect themselves.

Some of the parties to this case, including CWIC, are non-profit organizations. CWIC depends on its members for financial support, which is made up of individuals engaged in agriculture and small businesses. CWIC does not have political subdivisions and other retail water suppliers among its members. Additionally, the order LCRA sought has already rendered many of its members unable to conduct their businesses this year. For CWIC, even obtaining a copy of the transcript was a serious financial decision, not to mention the additional financial hardship caused by the expedited transcription services. Although CWIC affirms the ALJs' proposal for decision in allocating all transcript fees to LCRA, If CWIC is compelled to contribute to such fees, it should be in the same manner as the National Wildlife Federation and AP Ranch, which LCRA proposes to charge 5 percent.⁶

LCRA and its firm-water customers receive the entire benefit of the relief sought, and the downstream irrigators bear all of the cost of the consequent lost water supply. Also, LCRA has the greatest financial capability to pay the cost, and can recoup that expense through its rates (which provides an equitable distribution). LCRA attempt to claim that CWIC made a "last minute" decision to request a contested case. Indeed, it was a hard decision to make given the expense of litigation, but the timing of the Executive Director's notice of decision did not leave many "minutes" to act upon. The best chance of averting a hearing would have been through a more meaningful exchange of information prior to the application being filed by LCRA, including perhaps an attempt to reach an agreed order, which CWIC was not afforded.

Conclusion

CWIC respectfully requests that the ALJs and the Commission maintain the original finding in the proposal for decision that LCRA is allocated the entire cost of the transcription fees, or in the alternative, CWIC is required to pay 5 percent as in the case of the National Wildlife Federation and AP Ranch, as suggested by LCRA. CWIC also requests that it be granted all such other relief as it may be entitled.

⁵ Tex. Admin. Code § (d)(1)(B) and (G).

⁶ LCRA's Exceptions at 18.

Respectfully submitted,

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By:

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ATTORNEYS FOR COLORADO WATER ISSUES COMMITTEE

CERTIFICATE OF SERVICE

I hereby certify with my signature below that a true and complete copy of CWIC's Reply to Exceptions to Proposal for Decision was served on the following parties of record via e-mail on this the day of 25th of February 2014.

Carolyn Ahrens

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